
UTAH LABOR COMMISSION

RICK D. LEONARD,

Petitioner,

vs.

**BERLIN TIRE and LIBERTY MUTUAL
FIRE INSURANCE CO; EMPLOYERS
REINSURANCE FUND,**

Respondents.

**ORDER MODIFYING
ALJ'S DECISION**

Case No. 05-0300

Rick D. Leonard asks the Utah Labor Commission to review Administrative Law Judge Marlowe's weekly rate of benefits awarded to Mr. Leonard under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and Utah Code Annotated § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Leonard requests reinstatement of his permanent total disability benefits from Berlin Tire, its insurance carrier, Liberty Mutual Fire Insurance Co., (hereafter referred to jointly as "Berlin Tire") and the Employer's Reinsurance Fund ("ERF") for a work injury that occurred on March 27, 1986. After holding an evidentiary hearing, Judge Marlowe reinstated Mr. Leonard's permanent total disability compensation payments at the rate of \$136.00 per week.¹

In his motion for review, Mr. Leonard argues that, according to § 34A-2-413(2)(c) of the Act, the appropriate weekly rate should be 36% of the state's current average weekly wage. Liberty filed a response agreeing with Mr. Leonard's contention. ERF did not file a response.

FINDINGS OF FACT

The Commission adopts Judge Marlowe's findings of fact, as supplemented by the record. The following facts are relevant to the issues in the motion for review:

On March 27, 1986, when Mr. Leonard was injured at work, his average weekly wage was \$150.00. In September 1991, Berlin Tire and ERF agreed that Mr. Leonard was permanently totally disabled. This agreement provided that Berlin Tire would continue paying Mr. Leonard \$100.00 per week in compensation until June 22, 1992, and ERF would continue paying Mr. Leonard \$136 per

¹ Mr. Leonard does not contest Judge Marlowe's denial of his claim for medical benefits; therefore the Commission will not review this issue.

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week thereafter, which was also 36% of the state's average weekly wage. As of June 23, 1992, ERF began paying Mr. Leonard \$136.00 per week, with annual increases in those payments in conjunction with the state's current average weekly wage. By 2001, Mr. Leonard's weekly payments were \$190.

In 2001, Mr. Leonard and the ERF agreed that if Mr. Leonard would successfully complete vocational retraining efforts, of which ERF would assist in paying, then he would no longer be eligible for permanent total disability payments. These efforts failed, however, and Mr. Leonard requests reinstatement of his permanent total disability compensation. Judge Marlowe reinstated these benefits, but at the weekly rate of only \$136 per week, which was 36% of the state's average weekly wage in 1992.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-413(2)(c) of the Utah Workers' Compensation Act provides that, during the initial 312-week entitlement period, permanent total disability compensation shall be 66-2/3% of the employee's average weekly wage at the time of the injury. After the initial 312-week period, the minimum weekly compensation rate shall be 36% of the current state average weekly wage, rounded to the nearest dollar.

Although the Compensation Agreement does not expressly provide for periodic increases to Mr. Leonard's permanent total disability award, the Commission finds that these statutory provisions were incorporated into the Agreement. The payment schedule outlined in the Agreement, as well as ERF's ten-year history of payments to Mr. Leonard, confirm this finding. The Commission concludes that Mr. Leonard is entitled to permanent total disability compensation equal to 36% of the current state average weekly wage, rounded to the nearest dollar.

ORDER

The Commission modifies Judge Marlowe's order to provide that ERF shall pay Mr. Leonard permanent total disability compensation benefits at 36% of the current state average weekly wage, rounded to the nearest dollar, beginning October 4, 2004, less applicable attorney's fees. Since October 4, 2004, any lump sum payment that has accrued and is still due to Mr. Leonard based upon this order, shall be adjusted based on the appropriate weekly compensation rate. It is so ordered.

Dated this 29th day of October, 2008.

Sherrie Hayashi
Utah Labor Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

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NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.